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Appeal from Circuit Court, Pittsylvania County.

Action by C. D. Foster's administrator against the Southern Railway Company. Judgment for plaintiff. Defendant appeals. Reversed and remanded for new trial. Cardwell, J., absent.

Wm. Leigh, for plaintiff in error.

B. H. Custer and *Geo. T. Rison*, for defendant in error.

ATLANTIC TRUST & DEPOSIT CO. v. UNION TRUST & TITLE CORPORATION.

Jan. 12, 1911.

[69 S. E. 975.]

1. Evidence (§ 419*)—Parol Evidence—Consideration of Bond.—In an action on a bond conditioned on the making of a loan and the erection by the principal of a building free of mechanics' liens within a time limited, the obligee may show a loan to the principal on different terms than those set out in the recitals on the bond, if the difference in the terms was known to the surety when it executed the bond.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1912-1928; Dec. Dig. § 419.* 13 Va.-W. Va. Enc. Dig. 18, et seq.]

2. Corporations (§ 428*)—Representation by Officers and Agents—Notice to Officer or Agent.—Knowledge acquired by officers or agents of a corporation in transactions affecting their business and employment must be regarded as actual notice to the corporation.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 1748-1761; Dec. Dig. § 428.* 3 Va.-W. Va. Enc. Dig. 568.]

3. Principal and Surety (§ 161*)—Remedies of Creditor—Sufficiency of Evidence.—In an action on a bond conditioned on the making of a loan to the principal obligor and the erection of a building free of mechanics' liens, within a time limited, evidence held sufficient to warrant the jury in charging the corporate surety with knowledge of the terms and conditions of the loan varying from those recited in the bond.

[Ed. Note.—For other cases, see Principal and Surety, Dec. Dig. § 161.* 13 Va.-W. Va. Enc. Dig. 18, et seq.]

Error to Court of Law and Chancery of City of Norfolk.

Action by the Union Trust & Title Corporation against the Victoria Hotel Corporation and another. From a judgment for plaintiff, the defendant Atlantic Trust & Deposit Company brings error. Affirmed. Cardwell J., absent.

See, also, 110 Va. 286, 67 S. E. 182.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Jeffries, Wolcott, Wolcott & Lankford and *Floyd M. Hughes*,
for plaintiff in error.

Loyall, Taylor & White, Thos. H. Willcox, and *A. G. Burrow*,
for defendant in error.

BONSAL *v.* CAMP.

Jan. 12, 1911.

[69 S. E. 978.]

1. Cancellation of Instruments (§ 23*)—Rescission—Restoration of Former Status.—In an action to annul a contract, there must be a sufficient averment and proof of facts to justify the interposition of the court, which must be able to substantially restore the parties to the position which they occupied before they entered into the contract.

[Ed. Note.—For other cases, see Cancellation of Instruments, Cent. Dig. § 32; Dec. Dig. § 23.* 11 Va.-W. Va. Enc. Dig. 887, 894.]

2. Cancellation of Instruments (§ 35*)—Parties.—On a bill to rescind a contract, all those substantially interested in the contract should be parties, unless the interests are severable, and, if the case can be completely decided as between the parties, that an interest exists in another whom the court can not reach by process will not prevent a decree.

[Ed. Note.—For other cases, see Cancellation of Instruments, Cent. Dig. §§ 55-65; Dec. Dig. § 35.* 11 Va.-W. Va. Enc. Dig. 902.]

3. Cancellation of Instruments (§ 35*)—Parties.—In an action to rescind a deed by defendant on the ground that plaintiff was induced to make the purchase through the fraudulent representations of one C., who assumed to act as plaintiff's agent and who was to be interested to the extent of one-twentieth of the land, the purchase price whereof was \$40,000, but who was alleged to be acting in defendant vendor's interest, such C. was a necessary party.

[Ed. Note.—For other cases, see Cancellation of Instruments, Cent. Dig. §§ 55-65; Dec. Dig. § 35.* 11 Va.-W. Va. Enc. Dig. 902.]

Appeal to Circuit Court of City of Norfolk.

Bill by W. N. Camp against W. R. Bonsal. Decree for plaintiff, and defendant appeals. Reversed and remanded.

Thos. H. Willcox and *N. T. Green*, for appellant.

W. L. Williams and *Peatross & Savage*, for appellee.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.